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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 **RENO MAY, an individual, et al.;**
14 Plaintiffs,
15
16 v.
17 **ROBERT BONTA, in his official**
18 **capacity as Attorney General of the**
19 **State of California, and Does 1-10,**

20 Case No. 8:23-cv-01696 CJC (ADSx)
21 8:23-cv-01798 CJC (ADSx)

22 **SUR-REBUTTAL DECLARATION**
23 **OF JOSHUA SALZMANN IN**
24 **SUPPORT OF DEFENDANT'S**
25 **OPPOSITION TO PLAINTIFFS'**
26 **MOTIONS FOR PRELIMINARY**
27 **INJUNCTION**

28 Date: December 20, 2023
Time: 1:30 p.m.
Courtroom: 9B
Judge: Hon. Cormac J. Carney
Action Filed: September 15, 2023

22 **MARCO ANTONIO CARRALERO, an**
23 **individual, et al.,**
24 Plaintiffs,
25
26 v.
27 **ROBERT BONTA, in his official**
28 **capacity as Attorney General of**
California,
Defendant.

SUR-REBUTTAL DECLARATION OF PROFESSOR JOSHUA SALZMANN

I, Joshua Salzmann, declare under penalty of perjury that the following is true and correct:

1. This declaration is based on my own personal knowledge and experience, and if I am called to testify as a witness, I could and would testify competently to the truth of the matters discussed in this declaration.

2. I have been retained by the Office of the Attorney General for California as an expert on the history of passenger transportation in the United States from the Colonial Period to the 21st century, with an emphasis on towns, cities, and settled, urban areas.

3. I previously provided a declaration in the above-captioned matters in support of the State of California’s opposition to the *May* and *Carralero* Plaintiffs’ motions for preliminary injunction. See Decl. of Joshua Salzmann, *May v. Bonta*, C.D. Cal. No. 8:23-cv-01696 CJC (ADSx) (Dkt. No. 21-10); *Carralero v. Bonta*, C.D. Cal. No. 8:23-cv-01798 CJC (ADSx) (Dkt. No. 20-10) (Salzmann Decl.). My professional background and qualifications, as well as my retention and compensation information, are set forth in Paragraphs 3 through 6 of my prior declaration.

4. I have been asked by the Office of the Attorney General to review and provide an expert opinion regarding some of the statements made in the Plaintiffs' reply briefs and supporting documents in these matters. *May* Dkt. Nos. 29, 29-9, 29-14, 29-15; *Carralero* Dkt. No. 29. I have reviewed those briefs and documents, and have prepared this sur-rebuttal declaration in response.

I. RESPONSE TO PLAINTIFFS' STATEMENTS REGARDING FOUNDING-ERA TRANSPORTATION SYSTEMS

5. The *Carralero* Plaintiffs contest my opinion that “[t]he first public transit systems as we understand them today emerged in the United States during

1 the first half of the 20th century.” Salzmann Decl. ¶ 80. In doing so, the *Carralero*
 2 Plaintiffs conflate Founding-era forms of private, long-distance travel with public,
 3 mass-transit used largely by daily commuters in the modern era.

4 6. The *Carralero* Plaintiffs claim: “While the Founding generation may
 5 not have imagined particular modes of public transportation like subways or buses,
 6 public transportation in some forms did exist at the Founding. As explained,
 7 passengers used to share stagecoaches on journeys throughout the colonies before
 8 the Revolution and in the states after it.” *Carralero* Dkt. No. 29 at 23. This claim
 9 is problematic for two reasons. First, it suggests that what has changed about
 10 transportation since the founding are merely the “particular modes of public
 11 transportation.” The changes in public transportation since the colonial era were
 12 not simply a matter of modes of getting around. Rather, as detailed in my
 13 declaration, the transportation systems we have today are of an entirely different
 14 scale from and have distinctive political, economic, and social functions than those
 15 that existed in the Founding period. *See* Salzmann Decl. ¶¶ 10-68.

16 7. For instance, the stagecoaches and ferries of America’s Founding era,
 17 to which the *Carralero* Plaintiffs cite, did not mainly serve local, daily commuters.
 18 Rather, stagecoaches and ferries were often used by long-distance travelers and
 19 could take many hours and even days. To illustrate this point, my declaration cites
 20 examples of passengers waiting for days at the ferry crossing from Brooklyn to
 21 Manhattan and of a stagecoach journey from Philadelphia to northern New Jersey
 22 that started at 4:00 AM and continued to after nightfall. *See* Salzmann Decl. ¶¶ 31,
 23 33. Moreover, stagecoaches were a form of transportation largely used by the well-
 24 to-do (*id.* ¶¶ 28, 31), and they functioned not just as a mode of human transit but
 25 also as a means of transporting mail, legal documents, and money (*id.* ¶¶ 28-30).
 26 Thus, with respect to its cargo, a Founding-era stagecoach is more analogous to an
 27 armored car than to a modern city bus. To suggest that embarking on a stagecoach
 28 journey or crossing a body of water on a ferry was tantamount to using a

1 contemporary public transit system is to disregard a key purpose of historical
 2 inquiry: to understand and describe change over time.

3 8. The second issue with the *Carralero* Plaintiffs' criticism of my
 4 opinion that "the first public transit systems as we understand them today emerged
 5 in the United States during the first half of the 20th century" is that the *Carralero*
 6 Plaintiffs are imprecise about the meaning of the word "public."

7 9. After the *Carralero* Plaintiffs claim that "public transportation in some
 8 forms did exist at the Founding," they follow with a reference to stagecoaches,
 9 stating that "passengers used to share stagecoaches on journeys throughout the
 10 colonies before the Revolution and in the states after it." *Carralero* Dkt. No. 29 at
 11 23. But the fact that "passengers used to share stagecoaches" does not change the
 12 fact that the vast majority of these stagecoaches—as well as other forms of
 13 Founding-era transit—were owned and operated by private individuals and
 14 companies. Thus, they were distinct from the contemporary "public" transit
 15 systems that are owned and operated by government entities.

16 10. Accordingly, and notwithstanding the *Carralero* Plaintiffs' arguments,
 17 it remains true that "[t]he first public transit systems as we understand them today
 18 emerged in the United States during the first half of the 20th century." Salzmann
 19 Decl. ¶ 80.

20 **II. RESPONSE TO PLAINTIFFS' STATEMENTS REGARDING RAILROAD RULE
 21 BOOKS AND TIMETABLES**

22 11. Given that public transit as we know it today did not begin to emerge
 23 until the 20th century, I examined rule books and timetables from privately owned
 24 railroad companies to determine what policies, if any, those private companies had
 25 with respect to transporting firearms. The section of my declaration that discusses
 26 these policies is the subject of several objections raised by the *May* Plaintiffs and
 27 their declarant, Clayton Cramer, which I am happy to address.

28

1 12. First, the *May* Plaintiffs claim that I did not provide citations to
 2 support my statements regarding railroad firearm policies set forth in Paragraphs 69
 3 and 70 of my declaration. *See* Pls.’ Evidentiary Objections to Salzmann Decl. ¶ 9,
 4 *May v. Bonta* Dkt. No. 29-9. These two paragraphs contain a transition to a new
 5 section of my declaration and a short overview of the types of sources I consulted
 6 as a basis for the section; source citations follow in the subsequent paragraphs. *See*
 7 Salzmann Decl. ¶¶ 71-76. In those introductory paragraphs (Paragraphs 69 and 70),
 8 I note that I consulted railroad rule books and timetables in online and brick and
 9 mortar archives, and that some sources did mention firearms while others did not.

10 13. The *May* Plaintiffs objected that I had not specified which archives I
 11 consulted. To clarify, I consulted sources from the Newberry Library in Chicago,
 12 IL, The Illinois Railroad Museum, Hathi Trust, Wx4 Historical Maps and
 13 Timetables, Internet Archive, and Google Books. The Plaintiffs also object that I
 14 did not specifically identify the sources which made no mention of firearms. I did
 15 not identify each historical document that made no mention of firearms (nor did the
 16 Plaintiffs) for purposes of clarity and brevity.

17 14. I did, however, cite numerous sources of railroad rules and regulations
 18 about transporting firearms in the section following Paragraphs 69 and 70. *See*
 19 Salzmann Decl. ¶¶ 71-76. I cited twelve specific rules to be exact, and I included a
 20 digital link to the rules in my citation if one existed. I also wrote the full text of
 21 several of the firearm policies of the railroads in the body of my declaration for the
 22 purposes of transparency and clarity.

23 15. Both sets of Plaintiffs attempt to use my acknowledgement of the
 24 scope and results of my research as a basis to impugn my work. The *May*
 25 Plaintiffs’ declarant, Clayton Cramer, claims that “[Salzmann] admits that he ‘was
 26 not able to perform an exhaustive search and analysis of all historic railroad rule
 27 books that are still in existence today.’” *See* Clayton Cramer Rebuttal Decl. ¶ 93,
 28 *May* Dkt. No. 29-15. The *Carralero* Plaintiffs state that I “concede” that many rule

1 books do not mention firearms at all. *See Carralero* Dkt. No. 29 at 23. However, I
 2 do not regard these points as “admissions” or “concessions,” but rather as instances
 3 of my taking care to specify the nature and scope of the evidence I consulted, which
 4 is my duty as a historian.

5 16. I first address the claim that I did not perform an exhaustive search.
 6 Performing an exhaustive search of every pre-20th century railroad rule and
 7 regulation in the nation is an immense undertaking that would require extensive
 8 time, travel, and effort searching for and analyzing all evidence that still remains in
 9 existence, which was not possible to undertake given the timing constraints of the
 10 Plaintiffs’ motions for preliminary injunction. I did, however, consult a substantial
 11 sample size of over seventy railroad companies’ rule books and timetables in
 12 formulating my expert opinions.

13 17. Second, in characterizing my statement that many railroad rule books
 14 do not mention firearms as a “concession,” the Plaintiffs suggest that the absence of
 15 a discussion of firearms lends support to their position. This logic does not follow.
 16 As discussed below and in my declaration, state and local concealed carry laws also
 17 applied to the transit systems that fell within each law’s purview, and railroad rule
 18 books did not often forbid passengers and employees from taking actions on
 19 railroads that would violate an established law. And yet, Cramer claims (without
 20 citing to any historical evidence) that “unless there was a prohibition on carrying
 21 guns on the train, there is no evidence that the practice was prohibited.” Clayton
 22 Cramer Rebuttal Decl. ¶ 97, *May* Dkt. No. 29-15. I do not view this claim as
 23 logical or credible.

24 18. Moreover, my declaration offers evidence that certain railroads—
 25 including the Union Pacific Railroad and the Central Pacific Railroad—did not
 26 allow passengers to take loaded weapons on passenger cars, starting at least as early
 27 as the 1880s. *See* Salzmann Decl. ¶¶ 71-77. The *May* Plaintiffs, in turn, attempt to
 28 dismiss these rules as “outlier examples.” *See* Pls.’ Evidentiary Objections to

1 Salzmann Decl. ¶ 9, *May* Dkt. No. 29-9. However, this argument evidences a
 2 misunderstanding of the magnitude and significance of these railroad systems.

3 19. The Union Pacific Railroad and the Central Pacific Railroad—which
 4 both had prohibitions on carrying loaded guns on passenger cars—were among the
 5 largest and most important railroads in the United States of America. Those two
 6 railroads comprised, respectively, the eastern and western halves of America’s first
 7 transcontinental railroad, which was completed with much fanfare on May 10, 1869
 8 at Promontory Point, Utah when California’s Leland Stanford used a silver hammer
 9 to tap the spike uniting the two lines. The Union Pacific began in Omaha,
 10 Nebraska and extended west for a total of 1,032 miles, and the Central Pacific
 11 started in Sacramento, California and stretched east through the mountains for 881
 12 miles. The completion of the first transcontinental railroad triggered celebratory
 13 cannon fire in New York and San Francisco, as the nation marked the monumental
 14 achievement of connecting the Atlantic and Pacific coasts by land. In sum, these
 15 two railroads cannot be dismissed as peripheral to the story of U.S. transportation
 16 history. Rather, the Central Pacific and the Union Pacific—and their policies—
 17 comprise a key chapter in our nation’s transportation history.¹

18 20. Cramer also objects to my discussion of railroad rules on the basis that
 19 “these were only institutional rules, not laws.” Clayton Cramer Rebuttal Decl. ¶ 97,
 20 *May* Dkt. No. 29-15. Given that most transportation was private in the 19th
 21 century, institutional rules are important in helping us understand the history of the
 22 regulation of firearms on transit systems. But because private company rules are
 23 not laws, I noted in my declaration that “it is also necessary to consider state and
 24 municipal laws that would have applied to travelers to understand the rules about
 25 carrying guns on mass transit.” Salzmann Decl. ¶ 78. I also cited such laws in my
 26 declaration, starting with a concealed carry statute from Chicago passed in 1871,
 27

28 ¹ RICHARD WHITE, RAILROADED: THE TRANSCONTINENTALS
 AND THE MAKING OF MODERN AMERICA 37 (2011).

1 just three years after the ratification of the Fourteenth Amendment and squarely in
 2 the period of Reconstruction (1865-1877). *Id.* ¶¶ 78-79.

3 21. The *May* Plaintiffs object to my citing the Chicago statute, as follows:
 4 “There is no citation to authority that state or municipal laws on firearms carry
 5 would apply to interstate railroad travelers or were understood to apply to such
 6 travelers. There is also insufficient citation to such state and municipal laws
 7 supporting the opinion, with only one Post-Reconstruction era municipal law
 8 cited.” *See* Pls.’ Evidentiary Objections to Salzmann Decl. ¶ 12, *May* Dkt.
 9 No. 29-9.

10 22. There are several problems with the *May* Plaintiffs’ claims. First, the
 11 Chicago statute is not a “Post-Reconstruction Era municipal law.” Reconstruction
 12 ended in 1877, which is a well-established historical fact, and the Chicago statute
 13 dates to 1871.

14 23. Second, I did not cite to only a single law. I wrote about a single law
 15 in the body of the text of my declaration (the Chicago statute) and also cited to the
 16 numerous state and local concealed carry laws included in the compendium filed by
 17 the Office of the Attorney General. *See* Salzmann Decl. ¶ 79, n.88 (“*See, generally,*
 18 Defendants’ compendium of historical analogues filed concurrently herewith.”). I
 19 did not reiterate all of the state and local concealed carry laws included in the
 20 compendium in the body of the text of my declaration for purposes of brevity.

21 24. Third, the *May* Plaintiffs claim that there is “no citation to authority
 22 that state or municipal laws...were understood to apply to such travelers.” *See* Pls.’
 23 Evidentiary Objections to Salzmann Decl. ¶ 12, *May* Dkt. No. 29-9. But by its
 24 plain terms, the Chicago concealed carry law applied within the city limits and did
 25 not include an exception for transit systems. *See* Salzmann Decl. ¶ 78 (“[The
 26 Chicago law] read: ‘That all persons within the limits of the city of Chicago are
 27 hereby prohibited from carrying or wearing under their clothes, or concealed about
 28 their persons...any...dangerous or deadly weapon.’”). That would mean that

1 Chicago's concealed carry prohibition would apply to people who were commuting
2 locally on the transportation systems that brought people to and from work and
3 other destinations. The Chicago statute was, moreover, enforced by the police
4 department, as my inclusion of data about arrests for violation of the city's
5 concealed carry ordinance in the 1870s attests. *Id.* ¶ 79.

6

7 I declare under penalty of perjury under the laws of the United States of
8 America that the foregoing is true and correct.

9

Executed on December 1, 2023, at Chicago, Illinois.

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Joshua Salzmann

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CERTIFICATE OF SERVICE

Case Names: ***Reno May, et al. v. Robert Bonta, et al.;
Carralero, Marco Antonio, et al. v. Rob Bonta***

Case Nos. **8:23-cv-01696-CJC (ADSx); 8:23-cv-01798-CJC (ADSx)**

I hereby certify that on December 7, 2023, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

**SUR-REBUTTAL DECLARATION OF JOSHUA SALZMANN IN
SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS'
MOTIONS FOR PRELIMINARY INJUNCTION**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished electronically by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct.

Executed on December 7, 2023, at San Francisco, California.

Vanessa Jordan

Declarant

Vanessa Jordan

Signature